



IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT
BRADFORD
MR RECORDER McKONE KC T20227052
CASE NO 202202844/B4
[2024] EWCA Crim 810

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 4 July 2024

Before:

LORD JUSTICE MALES

MR JUSTICE BRYAN

MRS JUSTICE THORNTON

REX

V

FAISEL KHALIL

NON-COUNSEL APPLICATION

APPROVED JUDGMENT

MR JUSTICE BRYAN:

1. On 26 August 2022, in the Crown Court at Bradford before Mr Recorder McKone KC and a jury, the applicant was convicted of conspiracy to possess a firearm with intent to endanger life, contrary to section 1(1) of the Criminal Law Act 1977, and on 9 September 2022 he was sentenced by the Recorder to 14 years' imprisonment.
2. His co-accused, Shakeal Rehman, was convicted of the same offence and was sentenced to imprisonment, with a minimum term of 7 years and 151 days.
3. The applicant applies for an extension of time of 13 days in which to renew his application for leave to appeal against sentence after a refusal by the single judge. No reasons have been given for the late submission of the renewal form.
4. Turning to the facts of the offending. The complainant, Rangzeb Ali, had a previous financial dispute with a man called Kashif Hussain. At the time of sentence, Hussain was still being sought by police and was thought to have fled the jurisdiction. The complainant moved house after the dispute and he did not believe that Hussain knew his new address. However, on 6 January 2022, a man appeared at the complainant's home and handed him a mobile telephone. The complainant recognised the voice on the phone to be Hussain's. Hussain threatened that he knew where the complainant lived and would get someone to get him. This incident was recorded on the complainant's home CCTV.
5. Between 11 and 12 January 2022, there was telephone contact between Hussain and the applicant and between the applicant and the co-defendant Rehman. On 11 January 2022, the applicant's Mercedes and Hussain's Range Rover were both parked outside a shop called Crème de la Crème. The applicant's sister was a director of that business. The driver of the Range Rover got out of the car and got into the Mercedes. The Mercedes was driven off at 11:26pm.
6. At around 12:03am on 12 January 2022, a shortened double-barrelled shotgun was discharged twice through the front door of the family home where Mr Ali lived with his wife and three children aged seven, five and four, in what was a residential area. Mercifully all the children were in bed and Mr Ali and his wife were upstairs in their bedroom. Photographs show two large holes in the front door and a lot of debris in the hallway, some of it next to a child's shoe. It is self-evident that if anyone had been in the hallway they could have been killed or seriously injured.
7. The co-defendant Rehman was the shooter. The applicant was the go-between as between Hussain and Rehman. Each conspirator played an important part in the conspiracy. Whilst the prosecution before trial had indicated that they would have been prepared to accept a guilty plea to the less serious offence of conspiracy to possess a firearm with intent to cause a fear of violence which would have attracted a much shorter sentence, the Recorder regarded that as irrelevant given that the defendants chose not to plead guilty to that offence and the defendants were convicted at trial of the more serious offence of

conspiracy to possess a firearm with intent to endanger life, and therefore stood to be sentenced on that basis.

8. At the sentencing hearing the Recorder had before him handwritten letters purporting to be from the victim Ali and his wife, the former purporting to suggest that the impact had not been bad physically or mentally and that the family got over the incident fairly quickly, with the wife's letter also asking for clemency. The Recorder did not regard the letters as truthful or genuine. He stated that he did not increase the sentence because of the letters and that they were, in any event, neutral as this was Category 2 harm offending because of a high **risk** of death or severe physical or psychological harm, which would be the case even if the letters had been true, as Category 2 relates to the risk of harm. It was common ground that this was Culpability A (given that a firearm was discharged). This provided a starting point of 14 years with a range of 11 to 17 years' imprisonment. The Recorder in fact placed the starting point at 12 years, at the upper end of Category 3, but then increased back to 14 years for the aggravating features of previous convictions, the fact that the firearm was shortened, and not recovered due to steps taken by the defendants. There was little, if anything, by way of available mitigation.
 9. Leave to appeal against sentence was refused by the single judge and the application has been renewed on the same grounds, albeit 13 days out of time, and without any explanation for such delay. It is said that the sentence passed was manifestly excessive in that, (1) the Recorder erred in finding that the letter to the court written by the complainant was not genuine and/or (2) the Recorder erred in placing the level of offending in Category 2A rather than Category 3A and/or (3) the Crown were prepared to accept a guilty plea to the lesser offence in Count 2 which should have led to a starting point of 10 years' imprisonment, with a range between 8 and 12 years.
 10. Like the single judge before us, we consider that there is no merit in any of these grounds. As to the letters, and whilst the Learned Recorder was entitled to be sceptical about them, they were in the event neutral in circumstances where the Learned Recorder rightly categorised the harm as Category 2 due to the high risk of death or severe physical or psychological harm. The offending was clearly correctly characterised as Category 2A offending. The fact that the Crown would have accepted a plea to a lesser charge before trial was rightly regarded as irrelevant, in circumstances where the defendants had been convicted by the jury of the more serious offence of conspiracy to possess a firearm with intent to endanger life, and stood to be sentenced on that basis. Having regard to the aggravating and mitigating factors (such as they were) the sentence passed was not arguably manifestly excessive.
 11. Accordingly, we refuse the extension of time and dismiss the renewed application.
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